

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

DEC 24 2008

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ROBERT LEWIS CAIN,	)	
Plaintiff,	)	Civil Action No. 7:08cv00627
	)	
v.	)	<u>MEMORANDUM OPINION</u>
	)	
TRACY RAY, et al.,	)	By: Samuel G. Wilson
Defendants.	)	United States District Judge

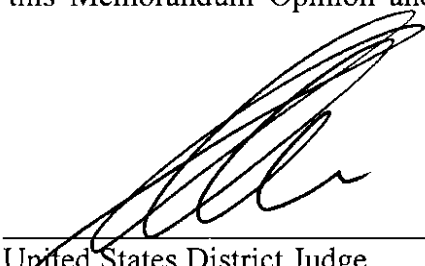
Plaintiff Robert Lewis Cain, a Virginia inmate proceeding pro se, brings this action pursuant to 42 U.S.C. § 1983. Cain has also requested to proceed in forma pauperis.

According to court records, Cain has filed at least three actions in a court of the United States that were dismissed on the grounds that they were frivolous, malicious, or failed to state a claim.<sup>1</sup> Therefore, Cain may not proceed with this action unless he either pays the \$350.00 filing fee or shows that he is “under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

As Cain has neither prepaid the filing fee nor demonstrated that he is “under imminent danger of serious physical injury,”<sup>2</sup> the court dismisses his complaint without prejudice.

The Clerk is directed to send a certified copy of this Memorandum Opinion and the accompanying Order to the plaintiff.

ENTER: This 24<sup>th</sup> day of December, 2008.

  
United States District Judge

<sup>1</sup> See Cain v. Terry, Civil Action No. 2:90cv01532 (E.D. Va. Mar. 22, 1991); Cain v. Rosenthal, Civil Action No. 3:93cv00852 (E.D. Va. Nov. 2, 1994); Cain v. Miller, Civil Action No. 7:97cv00304 (W.D. Va. May 28, 1997) (dismissed pursuant to 28 U.S.C. § 1915(e)(B)(ii)); and Cain v. Commonwealth of Virginia, Civil Action No. 3:96cv00991 (E.D. Va. Oct. 3, 1997) (dismissed as frivolous). Further, the United States Court of Appeals for the Fourth Circuit has recognized Cain as a three-striker. See Cain v. Edmondson, No. 97-7686 (4th Cir. Mar. 5, 1998) (order denying motion to proceed on appeal with PLRA status dated Feb. 4, 1998).

<sup>2</sup> Cain alleges that there is a crack in the ceiling in his pod at Red Onion State Prison and that when it rains or snows, water leaks into the pod. Cain claims that he is under imminent danger of serious physical harm in that the roof might collapse and thousands of pounds of concrete would fall on him. The court finds that Cain's allegations are merely speculative and fail to demonstrate that he is under imminent danger of serious physical harm.